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 DENNIS MONTGOMERY, and the MONTGOMERY
 FAMILY TRUST

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS MONTGOMERY and the
 MONTGOMERY FAMILY TRUST,

Plaintiffs,

vs.

ETREPPID TECHNOLOGIES, LLC, WARREN
 TREPP, and the UNITED STATES
 DEPARTMENT OF DEFENSE,

Defendants.

AND RELATED CASES.

Case No. 3:06-CV-00056-PMP-VPC
 BASE FILE

(Consolidated with Case No. 3:06-CV-
 00145-PMP-VPC)

**RESPONSE OF THE MONTGOMERY
 PARTIES TO THE PROTOCOLS
 PROPOSED BY THE GOVERNMENT
 TO FACILITATE THE U.S.
 PROTECTIVE ORDER AND
 [PROPOSED] PROTOCOLS TO
 FACILITATE THE U.S. PROTECTIVE
 ORDER**

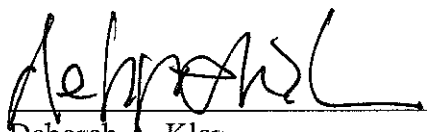
The Montgomery Parties have compared the protocols proposed by the Government to
 implement the U.S. Protective Order to the express terms of the U.S. Protective Order and
 generally concluded that the Government's proposed protocols (i) cannot be reconciled with the
 plain language of the U.S. Protective Order and (ii) appear to modify and expand the terms of the

1 U.S. Protective Order. *See* Exhibit "A" annexed hereto.¹ Such relief, however, is not authorized
2 absent the filing of an appropriate motion to modify the U.S. Protective Order. Accordingly, the
3 Montgomery Parties respectfully submit the [Proposed] Protocols to Facilitate the U.S. Protective
4 Order included on Exhibit "B", annexed hereto, which protocols are designed to implement the
5 specific paragraphs of the U.S. Protective Order and are consistent with the express language of
6 each of those paragraphs.

7 Dated: November 30, 2007

Respectfully submitted,

8 LINER YANKELEVITZ
9 SUNSHINE & REGENSTREIF LLP

10 By: 
11 Deborah A. Klar
12 Tuneen E. Chisolm
13 Attorneys for Plaintiffs
14 DENNIS MONTGOMERY and the
15 MONTGOMERY FAMILY TRUST
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27 ¹ Exhibit "A" sets forth the Montgomery Parties' concerns with respect to specific paragraphs of
28 the Government's Proposed Protocols. In Exhibit "B", which is the Montgomery Parties'
[Proposed] Protocols to Facilitate the U.S. Protective Order, each of those concerns is addressed
and ameliorated, consistent with the express terms of the U.S. Protective

EXHIBIT A

(pp.1-6)

**TO RESPONSE OF THE
MONTGOMERY PARTIES
TO THE PROTOCOLS
PROPOSED BY THE
GOVERNMENT TO
FACILITATE THE U.S.
PROTECTIVE ORDER AND
[PROPOSED] PROTOCOLS
TO FACILITATE THE U.S.
PROTECTIVE ORDER**

U.S. PROPOSED PROTOCOLS

Government Proposed Language: On August 29, 2007, the Court issued a protective order, which is incorporated herein by reference ("U.S. Protective Order"). For the purpose of facilitating discovery in the action styled *Dennis Montgomery v. eTreppid Technologies, et al.*, Base File 3:06-CV-00056-PMP-VPC and 3:06-CV-00145-PMP-VPC ("the Action"), the parties have stipulated with the United States to adopt the following protocols to supplement the terms of the U.S. Protective Order:

Montgomery Response: There is no reason to incorporate the Protective Order into the Protocols, thereby creating a new protective order. The Protective Order should only be annexed as an exhibit to the protocols.

1. **Government Proposed Language:** Pursuant to paragraph 9 of the U.S. Protective Order, if a party intends to produce a document in discovery or otherwise which that party in good faith believes may fall within the scope of paragraphs 2 and 3 of the U.S. Protective Order, that document must be provided to counsel for the United States for review prior to production. The United States will make a determination and inform counsel for the parties in writing within a reasonable time whether the document falls within the scope of paragraphs 2 and 3 of the U.S. Protective Order.

Montgomery Response: Paragraph 7 of the Protective Order expressly addresses the circumstance when the Government may review documents produced in response to "a document request in discovery or at trial." Paragraph 9 does not. This language, therefore, purports to improperly modify the Protective Order. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses the implementation of the provisions of Paragraph 7 of the Protective Order, consistent with the express language of Paragraph 7. In addition, the phrase "reasonable time" is ambiguous.

2. **Government Proposed Language:** In connection with document discovery propounded pursuant to Rule 45 to a person not a party to the Action, a copy of the subpoena with which the person is served shall state the following: **"DISCOVERY IN THIS ACTION IS LIMITED BY THE TERMS OF THE U.S. PROTECTIVE ORDER ANNEXED HERETO AS EXHIBIT "A". PURSUANT TO THE TERMS OF THE U.S. PROTECTIVE ORDER EVERY WITNESS WHO APPEARS FOR DEPOSITION AND PRODUCES DOCUMENTS IN RESPONSE TO A SUBPOENA OR VOLUNTARILY PRODUCES DOCUMENTS OR PROVIDES TESTIMONY MUST COMPLY WITH THE TERMS OF THE U.S. PROTECTIVE ORDER"**

Montgomery Response: This language is included verbatim in Paragraph 1 of the Montgomery Parties' [Proposed] Protocols.

3. **Government Proposed Language:** Pursuant to paragraph 9 of the U.S. Protective Order, if a party or witness intends to produce a document required to be produced in connection

with a deposition which that party or witness in good faith believes may fall within the scope of paragraphs 2 and 3 of the U.S. Protective Order, then the document must be provided to counsel for the United States for review within a reasonable time before the deposition. Within a reasonable time, the United States will make a determination and inform counsel for the parties and/or the witness in writing of the document's receipt whether the document falls within the scope of paragraphs 2 and 3 of the U.S. Protective Order.

Montgomery Response: Paragraph 7 of the Protective Order expressly addresses the circumstance when the Government may review documents produced in response to "a document request in discovery or at trial." Paragraph 9 does not. This language, therefore, purports to improperly modify the Protective Order. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses the implementation of the provisions of Paragraph 7 of the Protective Order, consistent with the express language of Paragraph 7. In addition, the phrase "reasonable time" is ambiguous. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses that issue with the following phrase "the United States, unless otherwise directed by the Court, within three business days of receipt of the complete document or written discovery response, shall redact the protected information"

4 **Government Proposed Language:** If a party identifies information within a document or documents responsive to a discovery request or subpoena that is subject to paragraphs 2 or 3 of the U.S. Protective Order, paragraph 9 of that Order requires submission of such documents to the United States before responding to a discovery request or subpoena.

Montgomery Response: Paragraph 7 of the Protective Order expressly addresses the circumstance when the Government may review documents produced in response to "a document request in discovery or at trial." Paragraph 9 does not. This language, therefore, purports to improperly modify the Protective Order. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses the implementation of the provisions of Paragraph 7 of the Protective Order, consistent with the express language of Paragraph 7. In addition, the phrase "reasonable time" is ambiguous. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses that issue with the following phrase "the United States, unless otherwise directed by the Court, within three business days of receipt of the complete document or written discovery response, shall redact the protected information"

5. **Government Proposed Language:** If in the course of its review of a document produced under paragraph 4 above, the United States identifies information subject to the U.S. Protective Order, the United States will redact such information and provide the redacted document or documents to the submitter within a reasonable time after the document is provided to counsel for the United States.

Montgomery Response: Paragraph 7 of the Protective Order expressly addresses the circumstance when the Government may review documents produced in response to "a document request in discovery or at trial." Paragraph 9 does not. This language, therefore, purports to improperly modify the Protective Order. Paragraph 6 of the Montgomery Parties'

[Proposed] Protocols addresses the implementation of the provisions of Paragraph 7 of the Protective Order, consistent with the express language of Paragraph 7. In addition, the phrase "reasonable time" is ambiguous. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses that issue with the following phrase "the United States, unless otherwise directed by the Court, within three business days of receipt of the complete document or written discovery response, shall redact the protected information"

6. **Government Proposed Language:** With respect to all other documents produced in discovery or pursuant to subpoena, if in the course of its review of such documents, the United States identifies information subject to the U.S. Protective Order, the United States will redact such information and provide the redacted document or documents to the submitter within a reasonable period of time after receipt.

Montgomery Response: Paragraph 7 of the Protective Order expressly addresses the circumstance when the Government may review documents produced in response to "a document request in discovery or at trial." Paragraph 9 does not. This language, therefore, purports to improperly modify the Protective Order. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses the implementation of the provisions of Paragraph 7 of the Protective Order, consistent with the express language of Paragraph 7. In addition, the phrase "reasonable time" is ambiguous. Paragraph 6 of the Montgomery Parties' [Proposed] Protocols addresses that issue with the following phrase "the United States, unless otherwise directed by the Court, within three business days of receipt of the complete document or written discovery response, shall redact the protected information"

7. **Government Proposed Language:** In connection with deposition discovery propounded pursuant to Rule 45 to a person not a party to the Action, a copy of the subpoena with which the person is served shall state the following: **"DISCOVERY IN THIS ACTION IS LIMITED BY THE TERMS OF THE U.S. PROTECTIVE ORDER ANNEXED HERETO AS EXHIBIT "A". PURSUANT TO THE TERMS OF THE U.S. PROTECTIVE ORDER EVERY WITNESS WHO APPEARS FOR DEPOSITION AND PRODUCES DOCUMENTS IN RESPONSE TO A SUBPOENA OR VOLUNTARILY PRODUCES DOCUMENTS OR PROVIDES TESTIMONY MUST COMPLY WITH THE TERMS OF THE U.S. PROTECTIVE ORDER"**

Montgomery Response: This language is included verbatim in Paragraph 2 of the Montgomery Parties' [Proposed] Protocols.

8. **Government Proposed Language:** In connection with depositions noticed pursuant to Rule 30, a copy of the notice subpoena with which the person is served shall state the following: **"DISCOVERY IN THIS ACTION IS LIMITED BY THE TERMS OF THE U.S. PROTECTIVE ORDER ANNEXED HERETO AS EXHIBIT "A". PURSUANT TO THE TERMS OF THE U.S. PROTECTIVE ORDER EVERY WITNESS WHO APPEARS FOR DEPOSITION AND PRODUCES DOCUMENTS IN RESPONSE TO A SUBPOENA OR**

VOLUNTARILY PRODUCES DOCUMENTS OR PROVIDES TESTIMONY MUST COMPLY WITH THE TERMS OF THE U.S. PROTECTIVE ORDER"

Montgomery Response: This language is included verbatim in Paragraph 3 of the Montgomery Parties' [Proposed] Protocols.

9. **Government Proposed Language:** A copy of the U.S. Protective Order should be made the first exhibit to all depositions.

Montgomery Response: This language is included verbatim in Paragraph 4 of the Montgomery Parties' [Proposed] Protocols.

10. **Government Proposed Language:** Pursuant to paragraphs 2 and/or 3 of the U.S. Protective Order, prior to serving a subpoena, subpoena duces tecum or notice of deposition upon any person who is a current or former employee of the federal government, the parties will provide the name of that person to counsel for the United States. Within a reasonable time, counsel for the United States will inform counsel for the propounding party whether the United States has an objection under the U.S. Protective Order

Montgomery Response: The phrase "reasonable time" is ambiguous. Paragraph 5 of the Montgomery Parties' [Proposed] Protocols addresses that issue with the following phrase "Unless otherwise directed by the Court, within two business days of its receipt of that name, the United States shall inform counsel"

11. **Government Proposed Language:** Pursuant to paragraph 11 of the U.S. Protective Order, at a deposition, if the responding party reasonably believes that a full and complete response to a question could disclose information protected by the U.S. Protective Order, the responding party shall so state on the record. The responding party shall then provide a complete response to counsel for the United States prior to responding and outside the presence of counsel for the parties or any other person. After such consultation, the responding party shall respond only with information that counsel for the United States has determined is not governed by the U.S. Protective Order.

Montgomery Response: Paragraph 11 of the Protective Order expressly states that the information protected at a deposition is information protected pursuant to paragraphs 2,3,5 or 6 of the Protective Order. Paragraph 9 of the Montgomery Parties' [Proposed] Protocols tracks the language of Paragraph 11 of the Protective so there is no ambiguity regarding the information that is protected and subject to objection by the Government

12. **Government Proposed Language:** If during a deposition information is put on the record by any person present during the deposition which counsel for the United States believes is protected by the U.S. Protective Order, counsel for the United States has the right to object on the record and direct the person who has made the disclosure to make no further disclosure which is protected by the U.S. Protective Order. Counsel for the United States shall have the

right to direct the court reporter to provide a copy of that portion of the transcript to counsel for the United States. After receipt of the portion of the transcription, the United States will review the transcript within a reasonable time. If information protected under the U.S. Protective Order was disclosed, that information may be redacted by the United States and the redacted transcript will be provided to the court reporter. The court reporter shall be required to provide all written or oral recordings of the redacted portion of the transcript to counsel for the United States for disposition. An unredacted copy of the transcript will be maintained by the U.S. Department of Justice Security office.

Montgomery Response: Paragraph 11 of the Protective Order expressly states that the information protected at a deposition is information protected pursuant to paragraphs 2,3,5 or 6 of the Protective Order. Paragraph 9 of the Montgomery Parties' [Proposed] Protocols tracks the language of Paragraph 11 of the Protective so there is no ambiguity regarding the information that is protected and subject to objection by the Government.

13. **Government Proposed Language:** With respect to any document that the United States identifies as having information subject to the U.S. Protective Order that is in the possession of the parties, the parties shall produce such unredacted documents to counsel for the United States upon request.

Montgomery Response: Paragraph 7 of the Protective Order expressly addresses the circumstance when the Government may review documents produced in response to "a document request in discovery or at trial." There is no provision in Paragraph 7 or in any other paragraph in the Protective Order which states that the parties are obligated to produce unredacted documents to counsel for the United States upon request. This provision is an improper attempt to modify the terms of the Protective Order.

14. **Government Proposed Language:** The U.S. Protective Order governs any mediation convened in the Action. No documents, testimony or other information protected under the U.S. Protective Order are permitted to be provided to the opposing party, counsel or other person.

Montgomery Response: This language is included verbatim in Paragraph 10 of the Montgomery Parties' [Proposed] Protocols.

Government Proposed Language: Nothing in these protocols shall be construed to waive any party's right to seek further relief from the Court as deemed necessary and appropriate by that party.

Montgomery Response: This language is included verbatim in Paragraph 11 of the Montgomery Parties' [Proposed] Protocols.

EXHIBIT B

(pp.1-6)

**TO RESPONSE OF THE
MONTGOMERY PARTIES
TO THE PROTOCOLS
PROPOSED BY THE
GOVERNMENT TO
FACILITATE THE U.S.
PROTECTIVE ORDER AND
[PROPOSED] PROTOCOLS
TO FACILITATE THE U.S.
PROTECTIVE ORDER**

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 DENNIS MONTGOMERY, and the MONTGOMERY
 FAMILY TRUST

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS MONTGOMERY and the
 MONTGOMERY FAMILY TRUST,

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ETREPPID TECHNOLOGIES, LLC, WARREN
 TREPP, and the UNITED STATES
 DEPARTMENT OF DEFENSE,

Defendants.

AND RELATED CASES.

Case No. 3:06-CV-00056-PMP-VPC
 BASE FILE

(Consolidated with Case No. 3:06-CV-
 00145-PMP-VPC)

**[PROPOSED] PROTOCOLS TO
 FACILITATE U.S PROTECTIVE ORDER
 AND ORDER THEREON**

On August 29, 2007, the Court issued the United States Protective Order, a copy of
 which is annexed hereto as Exhibit "A" ("Protective Order"). Given the restrictions on discovery
 imposed by the Protective Order, for the purpose of facilitating discovery in the action styled
Dennis Montgomery v. eTreppid Technologies, et al., Base File 3:06-CV-00056-PMP-VPC and

3:06-CV-00145-PMP-VPC ("the Action"), the parties to the action have stipulated with the United States ("United States") to adopt the following protocols:

1. **Document Discovery Pursuant to Rule 45:** In connection with document discovery propounded pursuant to Rule 45 to a person not a party to the Action, a copy of the subpoena with which the person is served shall state the following: **"DISCOVERY IN THIS ACTION IS LIMITED BY THE TERMS OF THE UNITED STATES PROTECTIVE ORDER ANNEXED HERETO AS EXHIBIT "A" ("PROTECTIVE ORDER"). PURSUANT TO THE TERMS OF THE PROTECTIVE ORDER EVERY WITNESS WHO APPEARS FOR DEPOSITION AND PRODUCES DOCUMENTS IN RESPONSE TO A SUBPOENA OR VOLUNTARILY PRODUCES DOCUMENTS OR PROVIDES TESTIMONY MUST COMPLY WITH THE TERMS OF THE PROTECTIVE ORDER".**

2. **Deposition Discovery Pursuant to Rule 45:** In connection with deposition discovery propounded pursuant to Rule 45 to a person not a party to the Action, a copy of the subpoena with which the person is served shall state the following: **"DISCOVERY IN THIS ACTION IS LIMITED BY THE TERMS OF THE UNITED STATES PROTECTIVE ORDER ANNEXED HERETO AS EXHIBIT "A" ("PROTECTIVE ORDER"). PURSUANT TO THE TERMS OF THE PROTECTIVE ORDER EVERY WITNESS WHO APPEARS FOR DEPOSITION AND PRODUCES DOCUMENTS IN RESPONSE TO A SUBPOENA OR VOLUNTARILY PRODUCES DOCUMENTS OR PROVIDES TESTIMONY MUST COMPLY WITH THE TERMS OF THE PROTECTIVE ORDER"**

3. **Deposition Discovery Pursuant to Rule 30:** In connection with depositions noticed pursuant to Rule 30 to a person not a party to the Action, a copy of the notice subpoena with which the person is served shall state the following: **"DISCOVERY IN THIS ACTION IS LIMITED BY THE TERMS OF THE UNITED STATES PROTECTIVE ORDER ANNEXED HERETO AS EXHIBIT "A" ("PROTECTIVE ORDER"). PURSUANT TO THE TERMS OF THE PROTECTIVE ORDER EVERY WITNESS WHO APPEARS FOR DEPOSITION AND PRODUCES DOCUMENTS IN RESPONSE TO A SUBPOENA OR**

**VOLUNTARILY PRODUCES DOCUMENTS OR PROVIDES TESTIMONY MUST
COMPLY WITH THE TERMS OF THE PROTECTIVE ORDER"**

4 Deposition Exhibit: A copy of the Protective Order should be made the first exhibit to all depositions.

5 Implementation of Paragraph 2 of the Protective Order: Pursuant to paragraph 2 of the Protective Order, prior to serving a subpoena, subpoena duces tecum or notice of deposition upon any person who is a current or former employee of the federal government, the parties will provide the name of that person to the United States. Unless otherwise directed by the Court, within two business days of its receipt of that name, the United States shall inform counsel for the propounding party in writing whether pursuant to Paragraph 2 of the Protective Order, the identify of that witness is protected.

6 Implementation of Paragraph 7 of the Protective Order: Pursuant to paragraph 7 of the Protective Order, if a party responding to a question or document request in discovery or at trial believes that a full and complete response could disclose information protected by paragraphs 2,3,5 or 6 of the Protective Order, the responding party shall provide notice of such belief and a full and complete response to the United States, unless otherwise directed by the Court, at least five business days prior to responding. If the United States determines that a document or discovery response includes information covered by paragraphs 2,3,5 or 6 of the Protective Order, the United States, unless otherwise directed by the Court, within three business days of receipt of the complete document or written discovery response, shall redact the protected information and provide the parties and Court with a redacted copy of the document or written discovery response.

7 Implementation of Paragraph 9 of the Protective Order: Pursuant to paragraph 9 of the Protective Order, if the "documents" (as defined in paragraph 9 of the Protective Order as all notices of depositions, requests for discovery and responses thereto¹ and all pleadings and

¹ The Government takes the position that the phrase "responses to discovery" used in paragraph 9 mandates that all documents produced in the litigation be served on the Government. But that interpretation of the Protective Order cannot be reconciled with the plain language of paragraph 7 of the Protective Order. As demonstrated above, paragraph 7 addresses the

(Continued...)

1 motions and supporting memoranda) request or relate to information covered by paragraphs 2 or 3
 2 of the Protective Order, the Parties shall submit the documents to the United States for privilege
 3 review, unless otherwise directed by the Court, at least 5 business days prior to service or filing. If
 4 the United States determines that a document or discovery response includes information covered
 5 by paragraphs 2 or 3 above, the United States within three business days of receipt, unless
 6 otherwise directed by the Court, shall redact the information and provide the parties and Court with
 7 a redacted copy of the documents or discovery response

8 8. **Implementation of Paragraph 11 of the Protective Order:** Pursuant to paragraph
 9 11 of the Protective Order, at a deposition, if the responding party reasonably believes that a full
 10 and complete response to a question could disclose information protected by paragraphs 2,3, 5 or 6
 11 of the Protective Order, the responding party shall so state on the record. The responding party
 12 shall then provide a complete response to the United States prior to responding and outside the
 13 presence of counsel for the parties or any other person. After such consultation, the responding
 14 party shall respond only with information that the United States has determined is not governed by
 15 paragraphs 2,3,5 or 6 of the Protective Order

16 9. **Implementation of Paragraph 11 of the Protective Order:** If during a deposition
 17 information is put on the record by any person present during the deposition which the United
 18 States believes is protected by paragraphs 2, 3, 5 or 6 of the Protective Order, the United States has
 19 the right to object on the record and direct the person who has made the disclosure to make no
 20 further disclosure which is protected by paragraphs 2,3,5 or 6 of the Protective Order. The United
 21 States shall have the right to direct the court reporter to provide a copy of that portion of the
 22 transcript to the United States. After transcription, the United States will review the transcript
 23 within 5 business days of its receipt, unless otherwise directed by the Court. If information
 24 protected pursuant to paragraphs 2,3,5 or 6 of the Protective Order was disclosed, that information
 25 may be redacted by the United States and the redacted transcript promptly will be provided to the

26 _____
 27 (...Continued)

28 circumstance when a document to be produced in response to discovery or at trial must be provided
 in advance of production to the Government.

1 court reporter. The court reporter will be required to provide all written or oral recordings of the
 2 redacted portion of the transcript to the United States for disposition. An unredacted copy of the
 3 transcript will be maintained by the U S. Department of Justice Security office

4 10. **Scope of Protective Order:** The Protective Order governs any mediation convened
 5 in the Action. No documents, testimony or other information protected pursuant to paragraphs 2,3,
 6 5 or 6 of the Protective Order are permitted to be provided to the opposing party, counsel or other
 7 person.

8 11. **No Waiver:** Nothing contained in this Protocol shall be construed to waive any
 9 party's right to seek further relief from the Court as being necessary and appropriate by that party.

10 Dated: November 30, 2007

Respectfully submitted,

11 LINER YANKELEVITZ
 12 SUNSHINE & REGENSTREIF LLP

13 By: 

14 Deborah A. Klar
 15 Tuneen E. Chisolm
 16 Attorneys for Plaintiffs DENNIS
 17 MONTGOMERY and the
 18 MONTGOMERY FAMILY TRUST

19 ORDER

It is so Ordered.

20 Dated: November 30, 2007

21 _____
 22 U S. DISTRICT COURT JUDGE
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EXHIBIT A TO EXHIBIT B
(pp.1-6)
TO RESPONSE OF THE
MONTGOMERY PARTIES
TO THE PROTOCOLS
PROPOSED BY THE
GOVERNMENT TO
FACILITATE THE U.S.
PROTECTIVE ORDER AND
[PROPOSED] PROTOCOLS
TO FACILITATE THE U.S.
PROTECTIVE ORDER

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS MONTGOMERY, et al.,

Plaintiffs,

v.

ETREPPID TECHNOLOGIES, INC.,
et al.,

Defendants.

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

UNITED STATES PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26, in order to protect the classification, confidentiality and the rights to information and documents developed and disclosed in connection with this litigation, and to facilitate discovery by and among the parties to this action and from third parties, the United States hereby proposes entry of the following protective order.

1 IT IS HEREBY ORDERED as follows:

2 1. Certain information that may or may not be relevant to the claims and/or
3 defenses of eTreppid Technologies, LLC and its current or former officers or employees
4 (hereinafter collectively referred to as "eTreppid"), Warren Trepp, Dennis Montgomery, the
5 Montgomery Family Trust and/or Dennis Montgomery and Brenda Montgomery as trustees of
6 the Montgomery Family Trust (hereinafter collectively referred to as "the Parties"), as
7 delineated in paragraphs 2 and 3 below, is subject to the state secrets privilege, the disclosure
8 of which reasonably could be expected to cause serious, and in some cases exceptionally
9 grave, damage to the national security of the United States. Such information shall not be
10 subject to discovery or disclosure by any of the Parties during all proceedings in these actions,
11 and shall be excluded from evidence at trial.

12 2. The Parties shall not serve or take any discovery relating to or questioning the
13 existence or non-existence of any actual or proposed relationship, agreement, connection,
14 contract, transaction, communication or meeting of any kind between any entity in the
15 intelligence community as defined by the National Security Act of 1947,
16 50 U.S.C. § 401(a)(4), which includes intelligence elements of the military services, or any
17 current or former official, employee or representative thereof (hereinafter collectively referred
18 to as "intelligence agency") and the Parties.

19 3. The Parties shall not serve or take any discovery relating to or questioning any
20 actual or proposed intelligence agency interest in, application of or use of any technology,
21 software or source code owned or claimed by the Parties.

22 4. This Order does not preclude the Parties from serving or taking any discovery
23 from other Parties or third parties relating to, or questioning, the following:
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1 a The existence and nature of the "Big Safari" contract (hereinafter referred to as
2 "the Big Safari Contract") between eTreppid and the United States Air Force, including but not
3 limited to the fact that the Big Safari Contract required eTreppid to perform data analysis and
4 the fact that the data analysis eTreppid performed under the Big Safari Contract involved
5 image identification technology;

6 b The fact that the Big Safari Contract required employees and/or officers of
7 eTreppid to sign secrecy agreements with the Department of Defense;

8 c The computer source code, software, programs, or technical specifications
9 relating to any technology owned or claimed by any of the Parties ("the Technology");

10 d Any contract, relationship, agreement, connection, transaction, communication
11 or meeting of any kind relating to the Technology, unless covered by paragraphs 2 or 3 above;

12 e Any actual or potential commercial or government applications of the
13 Technology, unless covered by paragraphs 2 or 3 above;

14 f Facts relating to the issue of ownership by the Parties of any right or interest in
15 the Technology, unless covered by paragraphs 2 or 3 above;

16 g The revenue, income, expenses, profits and losses of the Parties, unless
17 disclosure of such information would be covered by paragraphs 2 or 3 above; and

18 h Any consideration received by any of the Parties relating to the Technology,
19 unless covered by paragraphs 2 or 3 above.

20 5 The Parties shall not discuss, mention, question or introduce as evidence, either
21 at trial, in any pleading or motion, or in any case-related correspondence, any actual or
22 proposed relationship, agreement, connection, contract, transaction, communication or
23 meeting of any kind between any intelligence agency and any of the Parties.
24

1 6 The Parties shall not discuss, mention, question or introduce as evidence, either
2 at trial, in any pleading or motion, or in any case-related correspondence, any actual or
3 proposed intelligence agency interest in, application of or use of the Technology

4 7 No question and no document request in discovery or at trial shall require a
5 response that would include any information covered by paragraphs 2, 3, 5 or 6 above, but if
6 the responding party believes that a full and complete response could disclose information
7 within the scope of the state secrets privilege, the responding party shall provide timely notice
8 of such belief and the full and complete response to the United States prior to responding, and
9 shall respond only with information that the United States has determined is not subject to the
10 state secrets privilege.

11 8 The military and state secrets privilege, the claim that any discovery is
12 covered by paragraphs 2 or 3 above, and the claim that any evidence is covered by
13 paragraphs 2 or 3 above, can only be invoked by the United States. These claims cannot be
14 asserted by a private individual or entity.

15 9 All Parties shall serve the attorneys for the United States with (a) a copy of
16 all notices of depositions, (b) a copy of all requests for discovery and responses thereto,
17 and (c) a copy of all pleadings and motions filed together with supporting memoranda
18 (hereinafter collectively referred to as the "documents"), unless such documents request or
19 relate to information covered by paragraphs 2 or 3 above. If the documents request or
20 relate to information covered by paragraphs 2 or 3 above, the Parties shall submit the
21 documents to the United States for privilege review prior to service or filing. All
22 documents filed or sought to be used as evidence by the Parties in this case shall be
23 unclassified. This requirement applies to all motions, pleadings, briefs, and any other
24 document, including exhibits, correspondence, or anything appended thereto or filed
25 therewith. If the United States determines that a document or discovery response includes
26

1 information covered by paragraphs 2 or 3 above, the United States shall redact the
2 information and provide the parties and Court with a redacted copy of the document or
3 discovery response

4 10 The Clerk of the Court shall send attorneys for the United States a copy of all
5 future decisions and notices for hearings in these cases.

6 11 As the United States deems necessary, attorneys for the United States may
7 attend all depositions and proceedings in this case and may make objections as necessary to
8 protect national security information. If attorneys for the United States assert an objection
9 based on the need to protect national security information with respect to either witness
10 testimony or documents introduced or otherwise relied upon during a deposition, then the
11 witness shall be precluded from testifying with respect to the line of inquiry that engendered
12 the objection, and the document shall be withdrawn from the record pending an order of the
13 Court with respect to the scope of the government's national security objection.

14 12 To protect the United States' interests, attorneys for the United States may
15 participate in any proceeding in these cases, including but not limited to motions hearings, all
16 pre-trial proceedings, or trial by making and opposing motions, submitting briefs, and
17 participating in arguments

18 13 The United States shall be excepted from all party discovery during the
19 pendency of its motions to dismiss the claims against the Department of Defense
20 It is so ordered.
21

22 Dated: August 29, 2007
23

24 

25 PHILIP M. PRO
26 United States District Judge
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF LINER YANKELEVITZ SUNSHINE & REGENSTREIF LLP, and that on the 30th day of November, 2007, I caused to be served the within document described as **RESPONSE OF THE MONTGOMERY PARTIES TO THE PROTOCOLS PROPOSED BY THE GOVERNMENT TO FACILITATE THE U.S. PROTECTIVE ORDER AND [PROPOSED] PROTOCOLS TO FACILITATE THE U.S. PROTECTIVE ORDER** on the interested parties in this action as stated below:

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☒ **[ELECTRONIC]** By filing the document(s) electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document(s) to the persons listed above at their respective email address.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on 11/30/2007, at Los Angeles, California.


CYNTHIA KENNEDY

PROOF OF SERVICE